



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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MAY 11 2012

RE: MUR 6568
(formerly RR 11L-33)
Heath Shuler for Congress and
Troy Burns, in his official capacity as
treasurer

Dear Messrs. Svoboda and Werbrock:

On December 7, 2011, we notified your clients of RR 11L-33 indicating that in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that Heath Shuler for Congress and Troy Burns, in his official capacity as treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On May 8, 2012, the Commission opened MUR 6568 and found reason to believe that the Committee violated 2 U.S.C. § 434(b), a provision of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

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In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that your clients wish the matter to be made public.

Please note that the Committee has a legal obligation to preserve all documents, records, and materials relating to this matter until notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

We look forward to your response.

On behalf of the Commission,



Caroline C. Hunter
Chair

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Heath Shuler for Congress MUR 6568
and Troy Burns, in his official
capacity as treasurer

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). Heath Shuler for Congress is the principal campaign committee for Heath Shuler, who was a candidate for North Carolina's 11th Congressional District in the 2010 general election.¹ The Reports Analysis Division ("RAD") referred Heath Shuler for Congress and Troy Burns, in his official capacity as treasurer ("the Committee"), to the Office of General Counsel ("OGC") for failing to disclose a total of \$1,003,696.58 in disbursements on its 2010 October Quarterly, 12-Day Pre-General, and 30-Day Post-General Reports. In response to the RAD Referral, the Committee stated that the reporting omissions were the result of an accounting error caused by its vendor's failure to check one of the Committee's bank accounts for disbursement information. Based on the available information, the Commission opened a Matter Under Review and found reason to believe that the Committee violated 2 U.S.C. § 434(b) by failing to disclose all disbursements in its disclosure reports.

¹ Rep. Shuler is not seeking reelection in 2012. See Congressman Heath Shuler's Website, <http://shuler.house.gov/2012/02/rep-shuler-statement-on-retirement.shtml> (Feb. 2, 2012, 4:34 PM).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Summary

On January 31, 2011, the Committee amended three of its reports to the Commission to disclose additional disbursements totaling \$1,003,696.58. Specifically, the Committee amended its 2010 October Quarterly Report to disclose additional disbursements of \$228,085; its 2010 12-Day Pre-General Report to disclose additional disbursements of \$371,053; and its 2010 30-Day Post-General Report to disclose additional disbursements of \$404,558.58. These amendments reflected a notable increase in disbursement activity on each report, 35%, 94%, and 57%, respectively. Most of the increase resulted from the omission of three large disbursements to "Buying Time, LLC" for media buys (\$228,060 on September 27; \$371,028 on October 7; and \$400,493 on October 10, 2010). The remainder of the originally undisclosed disbursements was for stipend payments of approximately \$627 to three individuals, and a nominal amount of unitemized disbursements.

The Committee filed a Miscellaneous Text Submission (Form 99) with its amendments. The Form 99 explained that the disbursements were omitted from the Committee's original reports because of a vendor's accounting error, and stated that the "Committee is working with the vendor to correct its processes to prevent such errors in the future."

RAD sent the Committee Requests for Additional Information ("RFAs") requesting clarification regarding the increase in disbursements disclosed on each of the amended reports. The Committee submitted virtually identical responses to each of these RFAs, again attributing the omissions to a vendor's "accounting error" because the vendor "omitted the activity from one of the Committee's bank accounts." The Committee further explained in the responses, as it did on the January 31, 2011 Form 99, that the relevant amendments corrected the errors by

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1 disclosing the omitted activity and that the Committee was working with the vendor to prevent
2 similar errors in the future.

3 On December 7, 2011, OGC notified the Respondent of the Referral in accordance with
4 the Commission's policy regarding notification in non-complaint generated matters. *See* 74 Fed.
5 Reg. 38617 (August 4, 2009). In the response to the notification, the Committee reiterated its
6 previous explanations and provided more detail about the circumstances of the reporting errors.
7 *See* Letter from Brian G. Svoboda, Perkins Coie to Jeff S. Jordan, Office of the General Counsel
8 (Feb. 2, 2012) (hereinafter "Response"). The Committee explained that its compliance vendor,
9 "Campaign Finance Officers LLC" ("CFO"), was tasked with reviewing the Committee's bank
10 accounts, inputting disbursement information from those accounts into filing software, and
11 preparing the Committee's FEC disclosure reports. *Id.* at 1. And CFO failed to review the bank
12 account that the Committee used for media purchases prior to filing the reports in question and,
13 as a result, it failed to disclose disbursements for five media transactions. *Id.* at 1-2.

14 The Committee states that it self-reported the omissions to the Commission through its
15 amendments on January 31, 2011, immediately upon learning of CFO's errors while preparing
16 its 2010 Year-End Report. *Id.* Further, in order to prevent future errors, it has implemented a
17 new policy requiring that both the Committee and CFO review the Committee's FEC reports
18 twice before filing. According to the Committee, CFO also fired the employee who committed
19 the errors. Finally, the Committee contends that "enforcement action . . . would be inappropriate
20 here," because it hired an outside vendor to assist with its reporting requirements, the omissions
21 involved only a small number of transactions and it took prompt corrective action. *Id.*

B. Analysis

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 2 U.S.C. § 434. See 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the total amount of receipts and disbursements. See 2 U.S.C. § 434(b); 11 C.F.R. § 104.3. Committees are also required to disclose itemized breakdowns of disbursements and disclose the name and address of each person who has received any disbursement in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such disbursement. See 2 U.S.C. § 434(b)(4),(5) and (6); 11 C.F.R. § 104.3(b)(2) and (4).

The Committee did not comply with the Act's reporting requirements when it failed to disclose \$1,003,696.58 in disbursements, consisting primarily of payments for media purchases, on its original reports filed with the Commission. The Committee failed to disclose \$228,085 in disbursements on its original 2010 October Quarterly Report, \$371,053 in disbursements on its original 2010 12-Day Pre-General Report, and \$404,558.58 in disbursements on its 2010 30-Day Post-General Report. Therefore, there is reason to believe that the Committee violated 2 U.S.C. § 434(b).

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